Tan Pei Ing v Ainon binti Ali & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S3–23–20 OF 2003
MOHD HISHAMUDIN J
21 JANUARY 2009

Tort — Defamation — Defamatory statements — Publication of letter of support for candidates running for Pertubuhan Arkitek Malaysia elections — Whether publication of letter defamatory — Whether letter unethical and construed as misuse of position

This was action in defamation by the plaintiff, the President of Pertubuhan Arkitek Malaysia ('PAM'), against the defendants who were architects and also members of PAM. The defendants were standing for PAM elections to become members of the PAM Council. The plaintiff, who was aware of her being returned unopposed as the president of the incoming council, had issued and circulated a letter in which she declared her support for 10 out of the 14 candidates running for the PAM elections. The defendants were the 4 candidates who were not included in the list of candidates supported by the plaintiff. The defendants lodged a complaint by a letter (the defendants' letter) to the election officer. Subsequently, the defendants jointly circulated the defendants' letter containing statements by the plaintiff to the corporate members of PAM. The election officer submitted that the issuance of the letter of support was not in breach of PAM's constitution. However, the plaintiff who was dissatisfied with the circulation of the defendants' letter to the corporate members alleged that the publication of the letter was defamatory. The plaintiff further argued that the defendants' letter in their natural and ordinary meaning would be construed to mean that the plaintiff would misuse her position and as such was not fit to be an office bearer of PAM.

Held, dismissing the action with costs:

(1) The defendants' letter was merely a response to the plaintiff's letter. As such the defendants' letter was nothing more but a legitimate letter of complaint to an appropriate authority — the election officer.

The defendants' letter had expressed genuine concern on the part of the defendants and were issued and circulated in good faith. The lodgment of complaint to the election officer by the defendants had not gone over board and they were at liberty to complain to the election officer in as much as the plaintiff was free to canvass for the 10 candidates (see para 14).

(2) It was rather far-fetched for the plaintiff to assert that the defendants' letter would give any reasonable person who reads it the impression that the plaintiff personally benefited from circulation the plaintiff's letter or that she was unfit to be an office bearer of PAM. There was nothing unethical about the plaintiff's letter canvassing for the 10 candidates, equally there was nothing wrong or sinister or defamatory about the defendants' letter. It was stretching the interpretation of the contents of the defendants' letter rather a little too far to claim that the letter suggested that the plaintiff used her power as president for her own end or to claim that the letter questioned her fitness for office. The law of defamation is meant to protect the reasonable man, not the overly sensitive individual (see paras 14–15).

[Bahasa Malaysia summary

Kes ini merupakan tindakan fitnah oleh plaintif, Presiden Pertubuhan Arkitek Malaysia ('PAM'), terhadap defendan-defendan yang merupakan arkitek dan juga ahli PAM. Defendan-defendan bertanding dalam pemilihan PAM untuk menjadi Ahli Majlis PAM. Plaintif, yang mengetahui bahawa dia akan dilantik semula sebagai presiden tanpa bertanding bagi majlis yang akan datang ini, telah mengeluarkan dan mengedarkan surat sokongannya terhadap 10 daripada 14 calon yang bertanding dalam pemilihan PAM. Defendan-defendan merupakan antara 4 calon yang tidak mendapat sokongan plaintif. Defendan-defendan membuat aduan menerusi sepucuk surat (surat defendan-defendan) kepada pegawai pemilihan. Kemudiannya, defendan-defendan mengedarkan surat tersebut yang mengandungi pernyataan-pernyataan plaintif kepada ahli-ahli korporat PAM. Pegawai pemilihan menyatakan bahawa surat sokongan tersebut tidak melanggar perlembagaan PAM. Tetapi, plaintif yang tidak berpuas hati dengan pengedaran surat defendan-defendan kepada ahli-ahli korporat mendakwa bahawa penerbitan surat tersebut merupakan suatu fitnah. Plaintif seterusnya menegaskan bahawa surat defendan-defendan dalam maksud biasa dan lazim menunjukkan bahawa plaintif akan menyalahgunakan kedudukannya dan oleh itu tidak layak memegang jawatan dalam PAM.

Diputuskan, menolak tindakan dengan kos:

(1) Surat defendan-defendan hanyalah jawapan balas terhadap surat

A plaintif. Oleh itu, surat defendan-defendan hanyalah surat aduan yang sah ditujukan kepada pihak yang berkenaan, iaitu pegawai pemilihan. Surat defendan-defendan menzahirkan kebimbangan sebenar defendan-defendan dan dikeluarkan serta diedarkan dengan niat murni. Aduan defendan-defendan kepada pegawai pemilihan tidak melampaui
B batas dan mereka berhak untuk mengadu kepada pegawai pemilihan sebagaimana plaintif bebas merayu undi daripada 10 calon yang lain (lihat perenggan 14).

(2) Adalah tidak masuk akal apabila plaintif menegaskan bahawa surat
C defendan-defendan akan memberikan gambaran kepada sesiapa yang waras, ketika membacanya, bahawa plaintif akan mendapat faedah peribadi daripada pengedaran surat sokongannya atau menggambarkan bahawa dia tidak layak memegang jawatan dalam PAM. Perbuatan plaintif memancing undi daripada 10 calon itu tidak salah, begitu juga,
D tiada apa yang salah, sinis atau berbaur fitnah tentang surat defendan-defendan. Adalah keterlaluan apabila mentafsirkan isi surat defendan-defendan sebagai mencadangkan bahawa plaintif menggunakan kuasanya sebagai presiden bagi kepentingan dirinya sendiri atau mencadangkan surat tersebut mempersoalkan kelayakan
E plaintif. Undang-undang fitnah ini bertujuan melindungi seorang yang wajar, bukannya seorang yang keterlaluan sensitivitinya (lihat perenggan 14–15).]

Notes

F For cases on defamatory statements, see 12 *Mallal's Digest* (4th Ed, 2007 Reissue) paras 301–305

Malik Imtiaz (Asma Mohd Yunus with him)(Thomas Philip) for the plaintiff.
Sri Dev Nair (Yusrin Faidz with him)(Faidz, Leong & Chong) for the first defendant.
G *Mark Labrooy (Raja, Darryl & Loh) for the second defendant.*
Mahendra Navaratnam (Aida Haryani with him)(Kadir Adri & Partners) for the third defendant.
Bhag Singh (Bhag Sulaiman & Co) for the fourth defendant.

H **Mohd Hishamudin J:**

[1] This is an action in defamation by the plaintiff. The defendants jointly authored and caused to be published a letter ('the defendants' letter) containing statements which the plaintiff claims are defamatory. The plaintiff
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seeks damages and an injunction to restrain the defendants from further publishing the impugned letter. A

[2] The plaintiff is a well known architect of standing in Malaysia. At the date of filing the claim, and at all material times, the plaintiff was the President of Pertubuhan Architect Malaysia ('PAM'). B

[3] The defendants are architects and are members of PAM, and at the material time were standing for PAM elections to become members of the PAM Council. C

[4] Sometime prior to the elections, the plaintiff, on or around 15 August 2002, issued and circulated a letter in which she declared her support for ten out of the 14 candidates running for the PAM elections. Her letter reads:

> I hope you will support the following candidates for Council as I believe that these candidates will be able to serve the institute and work with the office bearers as a team to continue the objectives established during the last Council year. D

[5] The defendants were the four candidates that were omitted from the list of candidates she supported. At that point in time, the plaintiff was president of the outgoing council and was aware of her being returned unopposed as president for the incoming council. E

[6] The defendants took exception and lodged a complaint by way of a letter dated 19 August 2002 ('the defendants' letter') with the election officer. F

[7] The contents of the defendants' letter are reproduced below:

> We, the undersigned refer to the enclosed document from 'Pei Ing', the contents of which are calculated to influence PAM members by canvassing support for the 10 persons named therein for election to PAM Council. G
>
> The writer suggests that these 10 (ten) persons named therein would be the only appropriate persons who 'will be able to serve the institute and work with the office bearers as a team to continue the objectives established during the last Council year'. H
>
> In naming the 10 persons for the ten (10) PAM Council positions, the author of this document has excluded from her list, the other candidates contesting for PAM Council, this document has been widely circulated to members at large. It is common knowledge among these voting members, that the author is the President of PAM, Tan Pei Ing. I
>
> Given the fact that Tan Pei Ing, the writer of this document is the President of PAM, we consider that such partisan canvassing of support by the President of PAM would work a grave injustice to the other candidates contesting for PAM Council positions.

A We also question if this a proper use of the influence and position of PAM President from whom is required due fairness and impartiality in the election process. We further ask if such conduct by the President of PAM which may be construed as unethical and unfair, may have compromised this elections and render it invalid.

B Under the circumstances, we being the other candidates excluded from the list of the PAM President, would state that the elections cannot be construed to be fair both in procedure and in substance. Accordingly, we jointly lodge this protest to the Election Officer and request for you to cause a retraction of the said letter from Tan Pei Ing to be sent out immediately to all Corporate Members to ensure fairness and equitable treatment for all candidates in this PAM elections.

C

Additionally, we believe the due process of fair elections shall require you to initiate the appropriate action against the author of this document who while being President of PAM has caused this document canvassing support to be circulated among the voting members of PAM.

D Given the urgency of this situation with the AGM to be held within 6 days, we trust that the Election Officer shall act immediately to rectify the situation and ensure proper procedures and fair contest are upheld in our PAM elections.

E **[8]** Contemporaneously, the defendants circulated their letter to the corporate members of PAM. This was done prior to the election officer having made a decision on the complaint.

[9] The election officer had, in effect, decided on 22 August 2002 that the F note of support was not cause for concern. In a subsequent letter of 27 August 2002, the election officer classified the note of support as campaign literature and found no fault with it. In his evidence the election officer said that the issuance of the letter of support was not in breach of the PAM constitution.

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[10] The plaintiff does not take issue with the issuance of the defendants' letter to the election officer. The plaintiff, however, takes issue with the circulation of the defendants' letter to the corporate members. It is this publication that the plaintiff alleges is defamatory.

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[11] The plaintiff pleads that the defendants' letter, in their natural and ordinary meaning, were and are understood to mean that the plaintiff:

(i) was a person who would misuse a position of responsibility and/or the I influence and power arising from such position to her own end; and/or

(ii) was as such not fit to be an office bearer of PAM.

[12] It is further submitted by the plaintiff that the impugned letter was accusatory and aggressive in its suggestion that the plaintiff had acted unethically and unfairly such that a reader might form the view that the suggestion was in fact the reality.

[13] I have dismissed the plaintiff's claim with costs.

[14] In my judgment, the defendants' letter was merely a response to the plaintiff's letter. It is in this context that the defendants' letter must be judged. In my view, if the defendants' letter is judged as such, it is nothing more but a legitimate letter of complaint to an appropriate authority — the election officer. One may not necessarily agree with the merit of the complaint. But, in my opinion, from its tenor the defendants' letter expresses a genuine concern on the part of the defendants and were issued and circulated in good faith. I do not think that the defendants, in lodging their complaint to the election officer, had gone over board. To my mind, the defendants were at liberty to complain to the election officer in as much as the plaintiff was free to canvass for the ten candidates. The whole episode must be viewed in its proper perspective, that is to say, in the context of an ongoing election of the office bearers of PAM; and one must always be mindful of the fundamental rights to freedom of expression and freedom of association of the PAM members as enshrined in the Federal Constitution. I think it is rather far-fetched for the plaintiff to assert that the defendants' letter will give any reasonable person who reads it the impression that the plaintiff personally benefited from circulating the plaintiff's letter or that she is unfit to be an office bearer of PAM. To my mind just as there is nothing unethical about the plaintiff's letter canvassing for the ten candidates, equally, there is nothing wrong or sinister or defamatory about the defendants' letter. It is stretching the interpretation of the contents of the defendants' letter rather a little too far to claim that the letter suggests that the plaintiff used her power as president for her *own end* or to claim that the letter questions her *fitness for office*.

[15] The law of defamation is meant to protect the reasonable man, not the overly sensitive individual.

[16] Accordingly, the action must be dismissed with costs.

Action dismissed with costs.

Reported by Mashrifah Ravendran